IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Civil Writ Petition No.3794 of 2006

Balchandra Prabhakar Parange Petitioner
Vs.
The Recovery Officer,
Malojiraje Hahakari Bank Ltd. & ors. Respondents

Mr.J.Shekhar for petitioner.

Mr.S.G.Deshpande and Mr.J.N.Sawant for Resp. No.1-Absent.

CORAM: B.H.MARLAPALLE,J.

June 12, 2006.

P.C.

. The present petitioner is the plaintiff in Regular Civil Suit No.172 of 2005 filed against the present respondents and in the said Suit, two separate applications i.e. the Application at Exh.7 and application at Exh.21 were filed. The petitioner-plaintiff filed application at Exh.7, whereas application at Exh.21 was filed by the respondent no.1-Bank. Both these applications came to be rejected by a common order dated 26/4/2005 by the learned Civil Judge, Sr.Division at Satara and against the said order the petitioner filed Misc.Civil Appeal No.93 of 2005. The learned 2nd Ad-hoc Addl. District Judge at Satara was pleased to dismiss the said appeal by his order dated 27th April

2006 and hence this petition under Article 227 of the Constitution.

. There is no dispute that the present petition relates to the challenge rejecting the application at Exh.7 which was for temporary injunction.

. There is no dispute that the recovery certificate issued under Section 101 of the Maharashtra Co-operative Societies Act, 1960 had reached its finality and from the record the original owners i.e. Mr. & Mrs.Khandavee had executed an unregistered agreement for sale on 20/10/1999 in favour of the plaintiff. Thereafter on 16/11/1999 the plaintiff had issued a public notice informing about the agreement dated 20/10/1999 and thereafter the possession receipt was issued in favour of the plaintiff. Based on this the plaintiff claimed that he was in rightful possession of the said flat and had at the relevant time given it on lease to the United Western Bank.

. The Courts below have recorded that there was no registered sale deed in favour of the plaintiff in respect of the suit flat and the recovery orders

passed under Section 101 had reached the finality. The suit flat was mortgaged for the loan advanced by the Co-operative Bank in favour of which the recovery certificate was issued and, therefore, both the Courts below recorded concurrent findings that in such circumstances the plaintiff could not make out a prima facie case for setting aside the execution proceedings based on the recovery certificate.

. Thus the view taken by both the Courts below cannot be termed as perverse or grossly erroneous so as to cause interference in this petition under Article 227 of the Constitution. The petition is, therefore, rejected summarily. Trial of the suit is expedited.

(B.H.MARLAPALLE,J.)